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HOUSE BILL 1024

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Richard J. Berry

AN ACT

RELATING TO THE CHILDREN'S CODE; PERMITTING LAW ENFORCEMENT AGENCIES TO HELP PARENTS LOCATE MISSING CHILDREN; ACCOMMODATING CHILDREN IN PROTECTIVE CUSTODY; AMENDING PROTECTIVE CUSTODY TIME LIMITATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 32A-1-4 NMSA 1978 (being Laws 1993, Chapter 77, Section 13, as amended) is amended to read:

"32A-1-4. DEFINITIONS.--As used in the Children's Code:

A. "adult" means a person who is eighteen years of age or older;

B. "child" means a person who is less than eighteen years old;

C. "court", when used without further qualification, means the children's court division of the

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1 district court and includes the judge, special master or
2 commissioner appointed pursuant to the provisions of the
3 Children's Code or supreme court rule;

4 D. "court-appointed special advocate" or "CASA"
5 means a person appointed as a CASA, pursuant to the provisions
6 of the Children's Court Rules, who assists the court in
7 determining the best interests of the child by investigating
8 the case and submitting a report to the court;

9 E. "custodian" means an adult with whom the child
10 lives who is not a parent or guardian of the child;

11 F. "department" means the children, youth and
12 families department, unless otherwise specified;

13 G. "foster parent" means a person, including a
14 relative of the child, licensed or certified by the department
15 or a child placement agency to provide care for children in the
16 custody of the department or agency;

17 H. "group home" means a small supervised home for
18 children with emotional or behavioral problems in which
19 residents participate in daily tasks under the supervision of a
20 single set of house parents or a rotating staff of trained
21 caregivers;

22 [H.] I. "guardian" means a person appointed as a
23 guardian by a court or Indian tribal authority or a person
24 authorized to care for the child by a parental power of
25 attorney as permitted by law;

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1 ~~[F.]~~ J. "guardian ad litem" means an attorney
2 appointed by the children's court to represent and protect the
3 best interests of the child in a court proceeding; provided
4 that no party or employee or representative of a party to the
5 proceeding shall be appointed to serve as a guardian ad litem;

6 ~~[J.]~~ K. "Indian child" means an unmarried person
7 who is:

8 (1) less than eighteen years old;

9 (2) a member of an Indian tribe or is eligible
10 for membership in an Indian tribe; and

11 (3) the biological child of a member of an
12 Indian tribe;

13 ~~[K.]~~ L. "Indian child's tribe" means:

14 (1) the Indian tribe in which an Indian child
15 is a member or eligible for membership; or

16 (2) in the case of an Indian child who is a
17 member or eligible for membership in more than one tribe, the
18 Indian tribe with which the Indian child has more significant
19 contacts;

20 ~~[L.]~~ M. "Indian tribe" means a federally recognized
21 Indian tribe, community or group pursuant to 25 U.S.C. Section
22 1903(1);

23 ~~[M.]~~ N. "judge", when used without further
24 qualification, means the judge of the court;

25 O. "juvenile receiving home" means an emergency

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1 residential care facility for non-delinquent juveniles;

2 [N-] P. "legal custody" means a legal status
3 created by order of the court or other court of competent
4 jurisdiction or by operation of statute that vests in a person,
5 department or agency the right to determine where and with whom
6 a child shall live; the right and duty to protect, train and
7 discipline the child and to provide the child with food,
8 shelter, personal care, education and ordinary and emergency
9 medical care; the right to consent to major medical,
10 psychiatric, psychological and surgical treatment and to the
11 administration of legally prescribed psychotropic medications
12 pursuant to the Children's Mental Health and Developmental
13 Disabilities Act; and the right to consent to the child's
14 enlistment in the armed forces of the United States;

15 [O-] Q. "parent" or "parents" includes a biological
16 or adoptive parent if the biological or adoptive parent has a
17 constitutionally protected liberty interest in the care and
18 custody of the child;

19 [P-] R. "permanency plan" means a determination by
20 the court that the child's interest will be served best by:

- 21 (1) reunification;
- 22 (2) placement for adoption after the parents'
23 rights have been relinquished or terminated or after a motion
24 has been filed to terminate parental rights;
- 25 (3) placement with a person who will be the

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1 child's permanent guardian;

2 (4) placement in the legal custody of the
3 department with the child placed in the home of a fit and
4 willing relative; or

5 (5) placement in the legal custody of the
6 department under a planned permanent living arrangement;

7 [~~Q.~~] S. "person" means an individual or any other
8 form of entity recognized by law;

9 [~~R.~~] T. "preadoptive parent" means a person with
10 whom a child has been placed for adoption;

11 [~~S.~~] U. "protective supervision" means the right to
12 visit the child in the home where the child is residing,
13 inspect the home, transport the child to court-ordered
14 diagnostic examinations and evaluations and obtain information
15 and records concerning the child;

16 [~~T.~~] V. "reunification" means either a return of
17 the child to the parent or to the home from which the child was
18 removed or a return to the noncustodial parent;

19 [~~U.~~] W. "tribal court" means:

20 (1) a court established and operated pursuant
21 to a code or custom of an Indian tribe; or

22 (2) any administrative body of an Indian tribe
23 that is vested with judicial authority;

24 [~~V.~~] X. "tribal court order" means a document
25 issued by a tribal court that is signed by an appropriate

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1 authority, including a judge, governor or tribal council
2 member, and that orders an action that is within the tribal
3 court's jurisdiction; and

4 ~~[W.]~~ Y. "tribunal" means any judicial forum other
5 than the court."

6 Section 2. Section 32A-3B-4 NMSA 1978 (being Laws 1993,
7 Chapter 77, Section 76, as amended) is amended to read:

8 "32A-3B-4. PROTECTIVE CUSTODY--RESTRICTIONS--TIME
9 LIMITATIONS.--

10 A. A law enforcement officer who takes a child into
11 protective custody shall, with all reasonable speed:

12 (1) inform the child of the reasons for the
13 protective custody; and

14 (2) contact the department.

15 ~~[B. When the department is contacted by a law~~
16 ~~enforcement officer who has taken a child into protective~~
17 ~~custody, the department may:~~

18 ~~(1) accept custody of the child and designate~~
19 ~~an appropriate facility in which to place the child; or~~

20 ~~(2) return the child to the child's parent,~~
21 ~~guardian or custodian if the child's safety is assured.]~~

22 B. If a law enforcement officer takes a child into
23 protective custody pursuant to Section 32A-3B-3 NMSA 1978, the
24 officer shall transport the child to a juvenile receiving home,
25 police station, sheriff's office or group home, provided that

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1 the facility has an area for children in protective custody
2 segregated from pre- or post- adjudicated delinquent children,
3 and the child shall be held in custody until:

4 (1) the protective custody has expired and no
5 petition to extend the custody is filed pursuant to the
6 provisions of the Family in Need of Court-Ordered Services Act
7 or the Abuse and Neglect Act;

8 (2) the child is placed by the department in
9 foster care; or

10 (3) the child is returned to the custody of
11 the parent or guardian provided that the child's safety is
12 assured.

13 C. A child taken into protective custody shall not
14 be placed in or transported in a law enforcement vehicle or any
15 other vehicle that contains an adult placed under arrest,
16 unless circumstances exist in which any delay in transporting
17 the child to an appropriate facility would be likely to result
18 in substantial danger to the child's physical safety. When
19 such circumstances exist, the circumstances shall be described
20 in writing by the driver of the vehicle and submitted to the
21 driver's supervisor within two days after the driver
22 transported the child.

23 D. A child taken into protective custody shall not
24 be held involuntarily for more than [~~two days~~] seventy-two
25 hours, unless a petition to extend the custody is filed

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1 pursuant to the provisions of the Family in Need of Court-
2 Ordered Services Act or the Abuse and Neglect Act.

3 ~~[E-]~~ D. When a petition to extend the custody is
4 filed or any time thereafter, the children's court or district
5 court may issue an ex-parte custody order based upon a sworn
6 written statement of facts showing that probable cause exists
7 to believe that protective custody of the child is necessary.

8 ~~[F-]~~ E. The protective custody order shall be
9 served on the respondent by a person authorized to serve arrest
10 warrants and shall direct the law enforcement officer to take
11 custody of the child and deliver the child to a place
12 designated by the court.

13 ~~[G-]~~ F. The Rules of Evidence do not apply to the
14 issuance of an ex-parte custody order."

15 Section 3. A new section of the Children's Code is
16 enacted to read:

17 "[NEW MATERIAL] RUNAWAY CHILD--LAW ENFORCEMENT--PERMITTED
18 ACTS.--Whenever a law enforcement agency receives a report from
19 a parent or guardian that a child over whom the parent or
20 guardian has custody has, without permission, left the home or
21 residence lawfully prescribed for the child and the parent or
22 guardian believes the child has run away, a law enforcement
23 agent may help the parent or guardian locate the child and take
24 the child into protective custody for up to seventy-two hours."

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